IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

WP(C).No. 35464 of 2007(V)

AGAINST THE ORDER IN IA.1009/2007 IN CMA.58/2007 of ADDL. DISTRICT COURT, PATHANAMTHITTA

.....

PETITIONER:

RAMACHANDRAN NAIR, AGED 72 YEARS,
S/O.LATE GOPALA PILLAI, PALLATHU HOUSE,
EDAYARANMULA MURI, ARANMULA VILLAGE, KOZHENCHERRY TALUK, THROUGH POWER OF ATTORNEY HOLDER R.RAVICHANDRAN, S/O.RAMACHANDRAN NAIR, PALLATHU HOUSE, EDAYARANMULA MURI, ARANMULA VILLAGE.

BY ADV. SRI.RAMACHANDRAN NAIR(PARTY-IN-PERSON)

RESPONDENTS:

---

1. SADASIVAN, S/O.LATE PADMANABHAN,
PADINJARE UMMAZHAKKATHU HOUSE,
EDAYARANMULA MURI, ARANMULA VILLAGE,
KOZHENCHERRY TALUK.

2. SIVAJI, S/O.LATE SATHYAVIRATHAN,
EDAYARANMULA MURI, ARANMULA VILLAGE,
KOZHENCHERRY TALUK.

3. MOHAN, S/O.LATE VASUKUTTAN,
MANNILPURAYIL, MANU BHAVAN,
EDAYARANMULA MURI, ARANMULA VILLAGE,
KOZHENCHERRY TALUK.

4. SUGATHAN, S/O.LATE DAMODARAN,
PADINJARE UMMAZHAKKATHU HOUSE,
EDAYARANMULA MURI, ARANMULA VILLAGE,
KOZHENCHERRY TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/11/2007 ALONG WITH WP(C) 35533/07, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

==========

W.P(C).Nos.35464 & 35533 of 2007

==========

Dated this the 30th day of November, 2007.

JUDGMENT

W.P.(C)No.35533 of 2007 is preferred against the order of the Additional District Judge, Pathanamthitta in I.A.No.1008 of 2007 in C.M.A.No.59 of 2007 whereby the court had granted a stay of the execution of the order in I.A.No.749 of 2002 in O.S.No.110 of 2002. The other Writ Petition is preferred against the order of the very same Judge in I.A.No.1009 of 2007 in C.M.A.No.58 of 2007 whereby the court has granted an order of stay of the execution of the order in I.A.No.465 of 2002 in O.S.No.110 of 2002. The orders appealed against are for violation of the order of the court under Order 39 Rule 2A of C.P.C. and the trial court had passed an order in favour of the petitioner therein and directions were given and also there is issuance of warrant.

2. Aggrieved by the above decision, the respondents had

preferred the C.M.A. before the District Court which has been considered by the Additional District Judge. A perusal of the records produced by the writ petitioner, who is the party in person, would show that notice for appearing before the court on 11.10.2007 was issued on 10.10.2007 only and it is also his grievance that notice states that appearance is to be made before the District Judge and so it was not possible for him to appear before the Additional District Judge and that has resulted in passing the ex parte order of stay. There is considerable force in the said contention of the petitioner. First of all when these matters are entertained and notices are issued it is imperative that a reasonable time is granted to the parties to appear in person to attend the C.M.A. as well as the application for stay. But unfortunately, the Additional District Judge has rushed through the matter within a period of 24 hours and had passed orders, which had prejudiced the writ petitioner. Equally it is important that being an application under Order 39 Rule 2A of C.P.C. which affected the civil liberty of a person, the court has to bestow its attention in passing appropriate orders.

3. Therefore, I direct the court below to hear the present

writ petitioner after permitting him to file a counter in the stay application and dispose of the matter after hearing both sides. The learned District Judge shall dispose of these matters within a period of one month from today. As an interim arrangement, I direct the trial court not to execute its order for a period of one month until the stay application is disposed of by the Additional District Judge. The present writ petitioner is directed to appear before the court below on 10.12.2007 on which date the court shall fix a date for hearing after issuing notice to the appellants' counsel in the C.M.As. and then dispose of the matter in accordance with law.

Writ Petitions are disposed of accordingly.

M.N.Krishnan,
Judge.

ess 30/11